The Medicaid Planning Guidebook

Table of Contents

Section 1 Medicaid Planning Primer

Introduction	1
A. Medicaid Public-Private Partnership	2
B. Medicaid Planner's Role	3
C. Medicaid Planning Objective	5
<u>Section 2</u> <u>Medicaid Program Overvie</u>	<u>w</u>
A. The Federal-State Partnership	8
B. Governing Law	8
C. Scope of Coverage	10
D. Medicare Confusion	14
E. Nursing Home Medical Qualification	16
Section 3 Medicaid Eligibility Planning: A System	atic Approach
A. Medicaid Planning Timeline 1. Client Intake and Initial Assessment 2. Asset Assessment 3. Income Assessment 4. Quick Assessment 5. Medicaid Plan Development 6. Medicaid Plan Implementation 7. Application Filing 8. Verification Process 9. Eligibility Determination 10. Post-Eligibility Follow-Up	
11. Post-Death Advocacy	21

B. Client Intake	21
C. Pre-Planning vs. Crisis Planning	23
D. Preliminary Asset and Income Assessment	25
Section 4 General Asset-Eligibility Rules	
A. Protected Assets 1. Homestead 2. Primary Vehicle 3. Personal Items. 4. Cash Value Life Insurance. 5. Certain Business and Non-Business Property 6. Some Qualified Retirement Accounts 7. Single Premium Immediate Annuities (SPIA) 8. Funeral/Burial Plans 9. Burial Space 10. Individual Countable Resource Allowance	28 30 31 31 32 32 33
B. Unprotected Assets	36 37 37 38 38 39 39
C. Basic Spenddown Calculation	40
A. Community Spouse Spenddown	42
B. CSRA Calculation	43

	One-Half Deduction Ownership Issues	
C.	Changing the CSRA 1. Inflating the Countable Resources Before the Snapshot Date	50
	b. Revocable Inter Vivos Trust	51 52 53
	a. Conservative Methodb. Liberal Method4. Judicial Order	54 54
D.	. Married with No Community Spouse	
	Section 6 Asset Eligibility Strategies	
Α.	Understanding the Spenddown	58
	1. Countable to Non-Countable Conversion	
	Secondary Planning Considerations	
	4. Error Margin	
В.	Basic Asset-Eligibility Strategies	62
	1.Tangible Personal Property	
	2.Homestead Advantages	
	a. Home Renovations	
	b. New Home	
	Upgrade Vehicle 4. Pre-Pay Funeral/Burial	
	5. Long-Term Care Partnership Program	
C.	. Advanced Asset-Eligibility Strategies	71
	1. Unavailable/Non-Sellable Assets	
	a. Unavailable Assets	
	b.Non-Sellable Assets	
	2. Service Contracts	
	3. Income-Producing Property	
	4. Annuities and Promissory Notes	
	Strategic Divestment Caring for Disabled Family	
D.	. Difficult Strategies	83
	1 Single Premium Endowment Life Insurance	

2. Complex Transfers and Multi-Year Strategies	
3. Family Limited Partnerships and Closely Held Businesses	
4. Balloon Annuities and Self-Cancelling Installment Notes	86
E. Executing Strategies	86
1. Who Can Act	87
a. Power of Attorney	87
b.Guardian/Conservator	88
2. Documentation	89
a. Time Deposits	91
b. Securities	91
c. Insurance and Annuity Policies	92
d. Qualified Accounts	94
Section 7	
<u>Divestments</u>	
<u>Divestilients</u>	
Introduction	96
A. Divestment Transfers and Exceptions	97
1. Transfers/Gifts	
a. Direct Transfer/Gift	
b. Overpayment	
c. Underselling	
d. Creating Joint Ownership	
e. Immediate Annuities/Promissory Notes	
f. Life Estate	
g. Disclaimer	
2. Exceptions and Cures	
a. Homestead	
b. All Assets	
c. Additional Exceptions	
i. Intent to Dispose	
ii. Exclusively for Another Purpose	
iii. Cures	
iv. Hardship	
3. Lookback Period	
4. Penalty Period	
a. Calculation (Pro DBA)	
i. Round Down (Pre-DRA)	
ii. Pro-Rata	
iii. Daily Divestment Divisor	
b. Start Date	114

B. Divestment Eligibility Strategies	116
Historical Divestment Planning	
a. Divest and Wait	
b. Divest and Insure	
c. Serial Divestment (Prohibited by DRA)	
d. Half-a-Loaf (Prohibited by DRA)	
2. Modern Divestment Planning	
a. Reverse Half-a-Loaf (Partial-Cure States Only)	124
b. Divest and Purchase Annuity (or Make a Promissory Note)	
Section 8	
<u>Trusts</u>	
Introduction	130
A. Revocable Trusts	
1. History and Use	
2. Funding Revocable Trusts	
3. Medicaid Interplay	
4. Strategic Uses	
a. Increase CSRA	
b. Revoke/Defund Trust	135
B. Irrevocable Trusts	
1. Non-Divestment Trusts	
a. "Solely-for-the-Benefit-of-Spouse" Trust	
b. "Solely-for-the-Benefit-of" a Blind or Disabled Child	
c. Trust for Sole Benefit of Disabled Person under 65	
d. (d)(4)(A) Supplemental Needs Trust	
e. (d)(4)(C) Pooled Trustsf. Qualified Income Trust (QIT) (a/k/a Miller Trust)	
g. Third-Party Trusts	
h. Testamentary Trust	
2. Divestment Trusts	
a. Self-Settled No-Access Trust	
b. Self-Settled Limited-Access Trust	
c. Third-Party Limited Access Trust	
C. Practical Trust Issues	156
1. Trust Creation	
2. Trust Funding	
3. Trust Management	
4. Trust Taxation	
5. Trust Termination	165
a. True Revocation/Defunding	165
b. Trust Settlement/Fulfillment	167
c Trust Rusting/Reformation	168

Section 9 Annuities and Promissory Notes

A. Annuities	. 170
1. Medicaid Annuity Evolution	. 174
2. Modern Medicaid Annuity Requirements	
3. Modern Medicaid Annuity Strategies	
a. Divestment and Annuity	
b. Convert Countable Assets to Annuity (Married Couple)	
c. Annuity as Divestment	
d. Double Annuity Half-a-Loaf	
e. Medicaid Annuity as Leverage	
f. Qualified Medicaid SPIA	
i. Qualified Account—Single Patient	. 193
ii. Qualified Account—Married Patient with Community Spouse.	
iii. Qualified Account—Community Spouse Owner	. 195
4. Special Annuity Concerns	
a. Commissions	. 197
b. Surrender Fees	. 199
c. 1035 Exchanges	202
d. Qualified Rollovers/Transfers	
e. Effective Date	208
f. Free-Look Period	
g. Valuation	. 211
h. Illustrations	. 212
i. Private Annuities	. 213
B. Promissory Notes	. 213
Creating Promissory Notes	
a. Definition	
b. History of Promissory Note Uses	
c. Modern Promissory Notes	
2. Using Promissory Notes	
a. Community Spouse Excess Asset Conversion	
b. Promissory Note as Leverage	
Section 10	
Income Eligibility	
Introduction	. 220
A. Income Inventory	
1. Source Type	
a. Earned Income.	
b. Unearned Income	
c. Exclusions	. 223

2. Frequency	. 223
D. Land and Linding	005
B. Income Limits	
1. Spenddown States	
2. Income-Cap States	. 226
C. Determining the Copay	. 227
1. Single Patient Copay	
a. Determining Gross Income	
b. Determine Total Deductions	
i. Personal-Needs Allowance	
ii. Health Insurance Premiums	
iii. Pre-Medicaid Medical Bills	
iv. Guardian/Conservator Expense	. 231
v. Limited Housing Maintenance	
c. Determining the Copay	
2. Married Copay	
a. Determining the Spousal Allowance (MMMNA)	
i. No MIA	
ii. Partial MIA	. 236
iii. Full MIA	. 236
b. Calculating the Copay	. 237
D. Income Conservation Strategies	238
1. Health Insurance Premiums	
2. Increase Shelter Expense	
3. Fair Hearing	
4. Court Order	
5. Family Allowance	
6. Terminate Income Source	
Section 11 Special Concerns for the Homestead and Family Farm	
Introduction	. 245
A. Valuation	. 246
1. Scope of Property	_
2. Intent to Return	
3. Establishing the Value of Property	
4. Overlimit Homestead	
a. Home Equity Loan	
b. Reverse Mortgage	
c. Divest Equity	
d. Sell Equity	
e. Segregate or Lease a Portion	

B. Protection Strategies	262
Divest Home (Full or Partial)	
a. Total Divestment	
b. Divest Home and Keep Life Estate	266
c. Divest Small Fractional Share	268
2. Occupant/Family Exclusion	270
a. Community Spouse	
b. Caregiver Child	
c. Sibling Joint Owner	
d. Child under 21	
3. Miscellaneous Techniques	
a. Buy More Equity	
b. Beneficiary Deed	
c. Compound Strategy	276
Section 12	
Veterans' (VA) Benefits	
veterans (VA) Benefits	
Introduction	277
A FIGURE	070
A. Eligibility in General	
1. Basic Eligibility	
2. Wartime Service	2/8
B. Health Care Benefits	278
1. Basic Eligibility	
2. Financial Eligibility	
3. Medical Services and Medication Copays	279
4. Home Improvement	
5. Nursing Home Care	
a. Community Living Centers	
b. State Veterans' Home	
c. Contract Care	
d. Home Care	280
C. Pension	280
1. Eligibility	
2. Reduction	
3. Financial Assessment	
4. Accredited Advisors	
D. Life Insurance	၁၀၁
1. Types of Life Insurance	
Pypes of Life instraince Borrowing Against a Policy	
Contacting VA Insurance Center	
o. Contacting V/ modifice Center	

E. Burial and Memorial Benefits	283
1. National Cemeteries	283
2. Headstones and Markers	283
F. VA Advocacy	284
1. Commencing an Appeal	
2. The Board of Veterans' Appeals	
3. U.S. Court of Appeals for Veterans' Claims	284
Section 13	
Applying for Medicaid	
A. Determining the Applicant	005
A. Determining the Applicant	
1. Patient	
2. Community Spouse	
Authorized Agent	
b. Guardian/Conservator	
b. ddarddar/oonsorvator	200
B. Timing	289
1. Month-Based System	
2. Retroactive Application	
3. Annual Redetermination	
4. Medicare Overlap	
5. Eviction and Medicaid-Pending Status	
6. Promptness of Processing	
7. Applying Too Early	296
C. Completing and Filing the Application	296
1. Full Disclosure	
Filling out the Application	297
3. Attaching Exhibits	
a. Identification and Health Insurance Cards	
b. Proof of Citizenship	
c. Asset, Income, Expense, and Divestment Verification	
4. Waiver of Confidentiality	
5. Filing Locations	302
D. Verification Process	
1. Asset Verification	
a. Real Property	
b. Vehicles	
c. Financial Accounts	
d. Annuity and Life Insurance Policies	
e. Commercial Paper	306

2. Income Verification	. 307
a. Social Security	. 307
b. Pensions and Pension Annuities	307
c. Immediate Annuities, Promissory Notes, Land Contracts, & Trusts	308
d. Earned Income	
3. Expense Verifications	309
a. Health Insurance Premiums	
b. Shelter Expenses	309
i. Rent Expense	
ii. Mortgage Expense	
iii. Homeowners or Renters Insurance	
iv. Property Taxes	. 310
v. Utilities	. 310
4. Transfer and Divestments Verifications	
a. Significant Fair-Value Transactions	. 311
i. Source	
ii. Mode	
iii. Transaction Receipt	
iv. Resultant Asset	
b. Divestment-Penalty-Causing Transfer	
c. Exempt Transfers	
5. Timing	
a. Deadlines	
b. Best Evidence	
c. Shift the Burden	
d. Denial for Timelines	. 315
E. Appealing Adverse Decisions	315
1. Fair Hearing	
Representation and Advocacy	
3. Appeals to a State Court	
Section 14 Post-Eligibility Issues	
A. Post-Approval	
1. Notification	
2. Monthly Copay/Income Procedures	
3. Audits	
4. Annual Redeterminations	
5. Unreported Income Notifications	
6. Change Notification	
7. After-Acquired Assets	
8. Fee Anticipation	. 323

B. Asset Issues	323
Retitle CRSA Assets	
2. Update Estate Plans	
a. Patient's Estate Plan	
b. Community Spouse's Estate Plan	
i. Elective Share	
ii. Divorce	
C. Income Issues	329
1. Changes Impacting Copay	
2. Boosting Expenses	
3. Petitioning for Increased Spousal Allowance	
D. Miscellaneous Issues	
1. Moving	
a. Intrastate Move	
b. Interstate Transfer	
Bed Holds Correspondence and Communication	
3. Correspondence and Communication	
Section 15	
Estate Recovery	
Introduction	334
A. Federal Requirements	
History of Estate Recovery	
2. Breakdown of 42 U.S.C. §1396p	
a. Liens (a/k/a TEFRA Liens)	
b. Allowable Recovery	
c. Mandatory Recoveryd. Delay of Recovery	
e. Undue Hardship	
f. Estate Scope	
g. Long-Term Care Insurance Partnership Program	
h. Recovery from Community Spouses' Estates	
i. Annuity Beneficiary Designations	
B. State-by-State Overview	
1. Alabama (AL)	
2. Alaska (AK)	
3. Arizona (AZ)	
4. Arkansas (AR)	
5. California (CA)	
0	.524

7.	Connecticut (CT)	356
8.	Delaware (DE)	357
9.	Florida (FL)	359
10.	Georgia (GA)	360
11.	Hawaii (HI)	363
12.	Idaho (ID)	364
13.	Illinois (IL)	367
14.	Indiana (IN)	369
	lowa (IA)	
16.	Kansas (KS)	373
17.	Kentucky (KY)	375
18.	Louisiana (LA)	376
19.	Maine (ME)	377
20.	Maryland (MD)	378
21.	Massachusetts (MA)	379
22.	Michigan (MI)	380
23.	Minnesota (MN)	381
24.	Mississippi (MS)	383
	Missouri (MO)	
26.	Montana (MT)	385
	Nebraska (NE)	
	Nevada (NV)	
29.	New Hampshire (NH)	389
30.	New Jersey (NJ)	391
31.	New Mexico (NM)	393
32.	New York (NY)	394
	North Carolina (NC)	
34.	North Dakota (ND)	397
	Ohio (OH)	
36.	Oklahoma (OK)	400
37.	Oregon (OR)	402
	Pennsylvania (PA)	
39.	Rhode Island (RI)	405
	South Carolina (SC)	
	South Dakota (SD)	
42.	Tennessee (TN)	408
43.	Texas (TX)	409
44.	Utah (UT)	412
	Vermont (VT)	
	Virginia (VA)	
47.	Washington (WA)	415
48.	West Virginia (WV)	416
	Wisconsin (WI)	
50.	Wyoming (WY)	418

C. Ad	dvocacy	
	Probate and Non-Probate Estates	
	Estate Administration Guidance	
	3. Claim Negotiation	
	4. Claim/Statute Challenge	420
D. A	dditional Recovery Avoidance	421
	Probate Estate Avoidance	421
	Avoid Expanded Estate Assets	421
	3. Planning Sooner	
	4. Delay Estate Administration	
	5. Move the Patient (to another state)	
	6. Move the Patient (home)	
	7. Divorce	423
	Section 16	
	Advocacy Opportunities	
A. Ac	dministrative Advocacy	424
	1. Fair-Hearing Use	
	a. Increase the CSRA	
	b. Correct CSRA Error	425
	c. Correct Income Errors	425
	d. Increase MMMNA	
	e. Object to Wrongful Denial	
	f. Hardship Waivers	
	Fair Hearing Procedure	
	a. Request	
	b. Hearing	
	c. Representation	
	d. Appeal Adverse Ruling	428
B. St	ate Court Advocacy	
	Appeal Administrative Decisions	
	2. Mandamus Actions	
	3. Increase CSRA	
	4. Increase Community Spouse Monthly Income Allowance	
	5. Legally Incapacitated Individuals	
	a. Establishment of Guardian/Conservator	
	6. Ratification of Agents Actions	
	7. Ratify Medicaid Plan	
	a. Divestments	
	b. Non-divestment Penalty Transfers	
	c. Conflict of Interest	
	d. Termination of Spousal Rights	
	8 Trust Creation and Modification	433

10. Heir Representation	
11. Decedent Flobate	434
C. Federal Court Advocacy	434
	434
2. §1983 Claims	435
D. Miscellaneous Issues	435
	435
	436
	onals
4. Unauthorized Practice	of Law
<u>Practica</u>	Section 17 al Application (Examples)
A. Planning Scenarios	438
1. Example	438
<u>Clients</u> :	Robert is 78, and Dorothy is 76. Robert recently suffered a stroke.
Assets/Income:	\$100,000 securities; \$600,000 home (no debt); Robert has SSI of \$1,500 and a pension of \$2,000 a month; Dorothy has monthly income of \$700.
2. Example	441
<u>Client</u> :	Ruth, age 87 who is suffering from the degenerative effects of Alzheimer's disease. She has four children and several older grandchildren. Ruth's behavior became so erratic that 24-hour care became essential.
Asset/Income:	SSI of \$1,450 per month and a \$225 per month from a pension; three CDs with surrender values of \$25,602, \$74,325 and \$69,421; a deferred annuity with a net surrender value of \$100,300; a checking account with \$31,175; one vehicle with a blue-book value of \$5,400; debt free home with a value of \$101,300.

3.	Example	446

Client:

Geraldine is 77 and suffers from severe arthritis that is degenerative in nature and will likely be fully debilitated within the next four to six years. Her mother suffered from Alzheimer's before her death. She has two older sisters who are both exhibiting signs of the dementia and one is already in a nursing home.

Asset/Income:

A \$600,000 home with no debt that includes a small working farm that both of her sons use to make their living; a deferred annuity worth \$72,600; a brokerage account with conservative bond investments totaling \$123,765; six CDs valued respectively at \$52,703, \$49,457, \$72,153, \$42,259, \$51,108, and \$27,075; a checking account with a \$22,700 value; SSI of \$1,370 per month plus \$515 from the interest/dividends of her securities; an older model sedan worth approximately \$3,150.

Client:

Thomas is 81 and has been in and out of the hospital over the past two months with bouts of dementia. Thomas and his brother Paul inherited Thomas's' home as joint owners when their mother passed away 20 years ago. Thomas has been living with the mother and then just continued to live in the home after she died. Paul decided to move in with Thomas and has been living there for ten months. Thomas has no children.

Asset/Income:

The home is valued at \$300,000, and both brothers have a one-half of interest with all rights transferring to the survivor at death; Thomas has his funeral prepaid; he has \$6,575 in checking and \$5,043 in savings. He has three CDs each worth \$75,000; Thomas retitled his car to daughter Sarah two years ago (\$7,500 value) and he gave his other daughter Melissa a check for \$7,500 at the same time he gave the car to Sarah. He has 30 savings bonds worth about \$1,000 each.

5. Exa	ample	455		
	<u>Client</u> :	Edward and Martha (married). Ed is starting to show signs of memory lapse that is believed to be the early onset of Alzheimer's. Neither has purchased LCTI and Ed would no longer qualify; Martha does qualify, but the premiums are over \$6,000 a year far beyond what her budget can afford. They have two daughters who they would like to see inherit their estate.		
	Asset/Income:	Together they own a home value at \$150,000 (no debt) and a combined total of \$90,000 in certificates of deposit and \$18,000 in checking; Edward receives a monthly SSI check of \$1,657 and a monthly pension of \$1,035.Martha receives a monthly SSI check of \$725.		
6. Example				
	<u>Client</u> :	Dolores is in the hospital for a week and the doctor in charge of supervising her believes she is ready for discharge to a nursing home as soon as a bed becomes available. She has two daughters, Darla and Darcy. Darla, the oldest, is named as an agent under Dolores's power of attorney. Darcy is permanently blind, and lives in a group home, and is surviving on SSI and Medicaid.		
	Asset/Income:	Dolores has a home valued at \$600,000 (no debt); \$173,000 in checking, savings, and certificates; no vehicle; monthly SSI of \$1,375 and a survivor pension of \$881.		
7. Example				
	<u>Client</u> :	Ray and Sophie (ages 82 and 79, respectively) have been married for over 50 years. Ray's health has deteriorated to the point where he no longer recognizes Sophie. He has been in a hospital for several weeks and was discharged to a nearby nursing home for rehabilitative care; but as he has seen no improvement in his full month at the nursing home, it is likely that he will be staying indefinitely. They jointly own most assets. They have two children who are both actively helping Sophie deal with the fallout from Bay's health crisis		

Asset/Income:

Two sedans worth \$8,975 and \$5,034; a modest ranch-style home worth \$295,000 (no debt); a stock portfolio worth \$127,550; a deferred annuity worth \$72,250 (with a cost basis of \$35,000); and three CDs worth \$39,055, \$62,121, and \$51,308 respectively; Ray has an IRA solely in his name worth \$37,716; he also has SSI of \$1,396 a month and a monthly pension payment of \$903. Sophie SSI income of \$895 a month and a small monthly pension of \$103.

Client:

Isaac and Agnes find themselves dealing with Agnes's declining health. Isaac is having memory lapses. Agnes, however, has started wandering off; and her dementia has gotten so bad that she is now in the nursing home after a weeklong hospital stay. Isaac never prepared for dealing with a long-term care stay beyond getting an estate plan in place. Isaac and Angie had gone to a lawyer to get a trust; but the lawyer told them that, with their limited amount of assets and the use of beneficiary designations, a will would be sufficient. However, Isaac insisted on getting a trust after attending a local estate planning workshop.

Asset/Income:

Home valued at \$105,000 (no debt) which was deeded to their inter-vivos trust at the time they completed their estate plan; a checking account of \$7,221; a \$62,703 CD; a family sedan valued at \$12,000; Isaac and Agnes receive monthly SSI payments of \$1,105 and \$767 respectively.

Client:

George and Mary do not have much, but they are proud to have paid off their home before retirement. George is suffering from Alzheimer's and has spells that have gotten out of control, necessitating 24-hour care. Mary is worried about keeping what she has to live on, how much the nursing home will cost her, and if they can leave their home to their two children. Their two daughters live out of town but have flown home to help Mary get things in order.

Asset/Income:

A small \$3,271 savings account; an annuity in Mary's name with a \$20,768 CSV; a sedan worth \$6,595; George's monthly SSI is \$986 and he receives a \$197 monthly pension payment; Mary receives a monthly SSI payment of \$895.